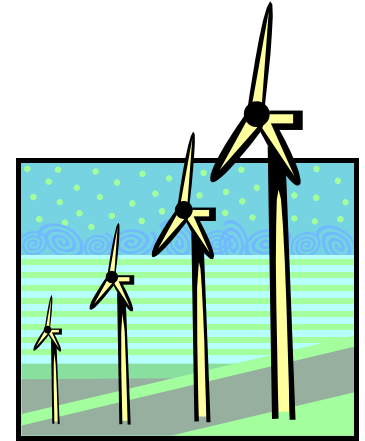


Structuring Community Wind Projects for Success



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- Typical Ownership Structures
- Preliminary Project Considerations
- Key Factors in Selection of Entity and Structure
- Structural Options
- Single-Owner Entity
- Nonprofit Organization
- Public Entities
- Community Organizations

Typical Ownership Structure

- Individually owned: Owned by local farmer, business or other person. May be based on Minnesota model for equity allocation.
- Nonprofit organization: Owned by a nonprofit group to generate income for the organization's purposes.
- Public entity: Owned by a school district, municipal utility, public university.
- Community association: owned by a larger group of community members to distribute project benefits and foster greater community goals of participation and local economic development.

Preliminary Project Considerations- All Structures

- **Project Viability.** The acceptance of the fact that the project has an underlying business purpose and needs to meet certain requirements to ensure financial success. Requires flexibility about the project siting, configuration, financing and ownership to permit profitability.
- **Risk Analysis.** An honest appreciation for the risks associated with a project and the need to create a structure that adequately addresses those risks, if taken.
- **Expertise.** A willingness to use necessary and appropriate expertise to improve project revenues and reduce costs and risks (development, permitting, engineering, legal).

Key Factors in Selection of Entity and Structure

- Protection from individual and personal financial liability.
- Meeting minimum legal requirements for authority and existence.
- Ability to capture and maximize available financial benefits.
 - State and federal tax credits, loans, grants and other benefits
 - Meet applicable utility tariff or purchasing requirements
- Favorable tax treatment for entity and owners.
- Participatory goals – who and how many are to benefit from the project, and the type of governance mechanism needed to balance participation opportunities with workable business governance.

Structural Options

- Limited Liability Company
- Partnerships (general and limited)
- Corporation (for profit)
- Corporation (nonprofit)
- Cooperative

Single-Owner Entity

- Liability protection and tax treatment suggest LLC; combine advantages of partnerships and corporations
- Flexibility allows greater financial options
 - Membership classes
 - Division of governing and financial rights
 - Tiered ownerships
- Minnesota Model

Minnesota Model

- Individual ownership with outside entity investment to maximize value of depreciation and tax credits
- Initial capital investment with reversion once financial goals met
- Need care for federal “at-risk” and other considerations
- Require balance of governing and financial rights
- Can add components for early lease and management fees to increase local benefits
- Can aggregate multiple small projects to improve economics

Nonprofit Organization

- Federal tax requirements strongly favor nonprofit corporation.
- For existing nonprofit organizations, issue may be whether to establish a separate entity for the project or retain within the larger organization.
- If separate, issues arise as to degree as to which the Articles should constrain the purposes to which the income should be put, and selection of an appropriate Board.
- Separate entity may offer same opportunity as Minnesota model to capture outside equity investment and lower project financing costs.

Public Entities

- Legal authority issues may dictate structure; in addition, ability to use public financing may determine options.
- If authorized, factors are similar to nonprofits as to whether to create a separate entity.
- Challenge is often whether the public entity can use its public resources and financing abilities and also capture any private investment opportunities.

Community Organizations

- Organization is driven to a greater extent to involve more members of the community to distribute the benefits of the project more widely and to further philosophical goals of community participation. Challenge is how to balance these equitable and participatory goals with the underlying legal and business objectives and requirements for a successful project.
- Securities law compliance becomes an issue.
- Governance and leadership issues are paramount.
- Order of events is also especially critical.

Order of Events – Community Organization

- In order to manage expectations and avoid legal liability issues, great care must be taken not to simply solicit money or participation before a project's parameters are defined adequately and viability is explored and established.
- This may require some project sponsors to undertake preliminary investigation and definition of the project before wider support is sought. An entity can be created with preliminary structure, subject to change later.
- Once viability is established, the determination can be made as to how broadly participation should be offered, and to whom, and on what terms. If needed, a formal prospectus can be prepared.

Community Organization (continued)

- Success is largely dependent on the abilities, credibility and community leadership skills of the initial sponsors.
- Common problems: Failure to appreciate business nature of project and need to balance broader participatory goals with financial and legal requirements; excessive democracy leads to paralysis; too little participation leads to disenchantment among community; failure to adequately assess viability leads to unworkable commitments; confusion about public and private objectives.
- Structural challenges and issues are less legal and more practical.
- Decision may need to be made about aggregated versus disaggregated projects.

About Jeffrey C. Paulson

- Jeffrey C. Paulson is the principal in his own law firm in Minneapolis, and has been practicing in the area of energy law for over twenty years, with his practice focusing on representing clients developing and owning renewable energy projects, including a majority of the wind projects recently built in Minnesota.
- He has extensive experience in leasing and site acquisition, project ownership structures, permitting, construction and turbine contracting, PPA and interconnection agreement negotiation, and negotiation of financing terms and documents.
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